

REMARKS

This amendment and reply is in response to the Office Action dated June 27, 2007. Applicants amend claims 24 and 38; support for these amendments are found in the specification, for example, at paragraph 0008 of U.S. Patent Application Pub. No. US 2002/0133073, the published application to the present case, Appl. No. 10/071,932. No new matter is added. In amending the claims Applicants do not concede that the claims as originally presented or previously amended are unpatentable over the references cited in the Office Action and reserve the right to pursue the previously presented claims in one or more continued applications. Claims 24, 26-34, 36-38, 40-44, 46, 47, and 49-52 are presented for examination and believed to be in condition for allowance, which action is requested.

Rejections Under Nonstatutory Obvious-type Double Patenting

Claims 24, 26-34, 36 and 37 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over: claims 1-39 of copending Application No. 10/099,881; claims 1-48 of copending Application No. 10/418,415; claims 1-41 of copending Application No. 10/295,794; and claims 1-46 of copending Application No. 10/418,922. Applicants do not necessarily agree with these provisional rejections, but to obviate the rejections with regard to claims 24, 26-34, 36 and 37, Applicants may submit an appropriate terminal disclaimer upon the indication that the claims are otherwise allowable. Applicants request the provisional rejections be held in abeyance until such determination.

Claims 24, 26-34, 36-38, 40-44, 46, 47 and 49-52 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-61 of copending Application No. 10/530,741. Applicants do not necessarily agree with this provisional rejection, but to obviate the rejection with regard to claims 24, 26-34, 36-38, 40-44, 46, 47 and 49-52, Applicants may submit an appropriate terminal disclaimer upon the indication that the claims are otherwise allowable. Applicants request the provisional rejection be held in abeyance until such determination.

Rejections under 35 U.S.C. § 102(e)

Claims 24, 26-34, 36-38, 40-44, 46, 47, and 49-52 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No 6,766,184 (Utzinger et al.). Without conceding in the rejection, Applicants amend independent claims 24 and 38 to include an additional limitation reciting the use of an amplitude of the processed spectral data to classify the test specimen. Applicants assert that the cited references, alone or in combination, do not teach or suggest the combined elements of either independent claim 24 or 38 as amended. Specifically, Utzinger, does not disclose the use of amplitudes of processed spectral data to classify a test specimen. Indeed, none of the methods in Utzinger discloses, for example, screening a specimen for a given condition using fluorescence spectral data with illumination at one excitation wavelength, and, if the result is not determinate, using an amplitude of a processed reflectance spectral data to classify the specimen. As such, Utzinger does not disclose the claimed subject matter as amended.

In view of the foregoing amendment, Applicants submit that independent claims 24 and 38, are in condition for allowance and request the rejection be withdrawn. Dependent claims 26-34, 36, 37, 40-44, 46, 47, and 49-52 should be allowable at least for the same reasons as discussed above.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.


Applicant : Nordstrom, et al.
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Respectfully submitted,

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